

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6571 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BHANJI MAKANJI KHETIYA

Versus

STATE OF GUJARAT

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Appearance:

MR BP MUNSHI for Petitioner  
SERVED BY DS for Respondent No. 1  
UNSERVED AS REFUSED for Respondent No. 4

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CORAM : MR.JUSTICE C.K.THAKKER and  
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 26/12/97

ORAL JUDGEMENT (PER C.K.THAKKER J.)

Rule. Mr.Uday Bhatt APP appears and waives service of Rule on behalf of respondent Nos.1 to 3. So far as respondent nos.4/1 to 4/5 are concerned, the endorsement shows that they have refused service. In the

facts and circumstances of the case, the matter is taken up for final hearing to day.

This petition is filed for quashing and setting aside the award at Annexure.A dt. August 19, 1996 and for a direction to Deputy Collector, Competent Officer and Land Acquisition Officer, Jamnagar, respondent no.3 herein to make reference in accordance with the provisions of Section 30 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act").

It is the case of the petitioner that he was having land bearing S.No.8 admeasuring 5 Acres and 21 Gunthas, situated at village Sodha-Taraghadi, Taluka Jam-Khambhalia, District Jamnagar. The land stood in the name of his father-Makanji Gopalji and thereafter in the name of the petitioner. The land was acquired under the provisions of the Land Acquisition Act. Award was declared on 19th August 1996 in LAQ Case No. 29(4)/94. Though it was the case of the petitioner that he was entitled to amount of award as he was the owner of the land, the amount was not paid to him. He, therefore, made an application to refer to a competent court but the prayer was not granted. In the award, which is impugned in the present petition, in para 3 it was stated that an application appears to have been made by village people of Sodha-Taraghadi on October 19, 1995 that the land in question, acquired under the Act, was of the ownership of Ram Mandir and that before more than 100 years, the land was given by village people as gift to Ram Mandir. Bhanji Makanji (petitioner) is merely a Pujari of the said Trust and that he was to do Sevapuja only. As the land which was acquired for Essar Oil Ltd. Company did not belong to the petitioner, he was not entitled to compensation under the Act. A prayer was, therefore, made by village people to deposit the amount by getting an account opened in an appropriate Bank in the name of Ram Mandir. It appears that pursuant to the said application, respondent no.3 passed order that the amount be paid to authorised person on behalf of the Trust.

Though various points were argued, in our opinion, the petition can be disposed of at this stage on the ground that the order passed by respondent no.3 is not in accordance with law.

Section 30 of the Act provides for settlement of disputes as to apportionment of amount of Compensation. It enacts that when a dispute arises as to the

apportionment of amount or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of a competent court. Section 31 provides for payment of compensation or deposit thereof in Court.

Conjoint reading of sections 30 and 31 of the Act makes it abundantly clear that if a dispute arises as to the person or persons, who is or are entitled to the amount of compensation, the Collector has to make reference to a competent court under Section 30 of the Act. Meanwhile the amount offered by way of award has to be dealt with in accordance with the provisions of Sec.31 of the Act.

Our attention was invited by Mr.Munshi to a decision of the Hon'ble Supreme Court in Arulmighu Lakshminarasimhaswamy Temple Singirigudi v. Union of India & Ors. 1996(8) JT SC 432, wherein Their Lordships observed that in case of dispute Section 30 enjoins the Collector to refer the dispute to a competent court and regarding payment of the amount of compensation, he has to follow the provisions of Section 31 of the Act.

No doubt, the Assistant Government Pleader drew our attention to affidavit-in-reply filed by the respondent Collector, wherein it was mentioned that the petitioner was not the owner of the land and that the land belonged to the village people which was gifted to Ramji Mandir. The petitioner was merely a Punjari performing Seva Punja and was a trustee and he is, therefore, not entitled to claim compensation .

In our opinion, all these questions are immaterial so far as making of reference is concerned. The Collector has to make reference in accordance with the provisions of Section 30 and has to follow the provisions of Sec.31 of the Act in the meantime. As and when the reference will be made appropriate court will decide all questions.

For the foregoing reasons, in our opinion, the petition deserves to be allowed by directing the Collector to make reference under Sec.30 of the Act by following provisions of Section 31 of the Act. The order passed by him deserves to be quashed and set aside to that extent. We may clarify that we are not expressing any opinion on merits of the case and as and when the question will be decided by a Competent Court, in pursuance of Reference under Sec.30 the court will decide

the same. Rule is accordingly made absolute with no order as to costs.

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